

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11492 of 2010

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Manju Devi Verma W/O Late Ramautar Mandal, R/O Mohalla- Sanhauli, P.O., P.S.
and Distt.- Khagaria

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna
 2. The Commissioner, Munger Division, Munger
 3. The Collector, Khagaria
 4. The Sub Divisional Officer, Khagaria
 5. The Anchal Adhikari, Khagaria
 6. Chandeshwari Mallik, S/O Late Ram Swarup Mallik
 7. Pappu Mallik, S/O Chandeshwari Mallik
 8. Pradeep Mallik, S/O Chandeshwari Mallik
 9. Babloo Mallik, S/O Srilal Mallik
 10. Kailash Mallik, S/O Balchand Mallik
 11. Madan Mallik, S/O Balchand Mallik
 12. Yogendra Mallik, S/O Balchand Mallik
 13. Bhool Mallik, S/O Surena Mallik
 14. Karelal Mallik, S/O Anup Mallik
 15. Lakshmi Mallik, S/O Bahor Mallik
 16. Pankaj Mallik, S/O Laxmi Mallik
 17. Chetan Mallik, S/O Karim Mallik
- All residents of Vill.- Mathurapur, P.S. and Distt.- Khagaria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dronacharya, Adv.

For the Respondent Nos.1 to 5 : Mr. Ajay Kumar Sharma, AC to PAAG-1

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 19-10-2016

Heard the learned counsel appearing on behalf of the petitioner and the learned AC to the Principal Additional Advocate General-1 appearing on behalf of the respondent nos. 1 to 5. However, none appears on behalf of the respondent nos. 6 to 17, though notices were issued to them by order dated 23.7.2010 passed by a co-ordinate Bench of this Court.

The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 8.4.2010/ 13.4.2010 passed in



Gairmajarua Aam Land Settlement Case No. 12 of 2008-09 by the District Collector, Khagaria, as contained in Annexure-8 to the writ petition, whereby and whereunder the lands bearing plot nos. 219 and 218 appertaining to khata no. 374 and 454 respectively, total area being 81 decimals, situate at village Mathurapur in the district of Khagaria have been recommended for being settled in favour of 27 landless families belonging to Mahadalit class (Scheduled caste) at the rate of 3 decimals per family for the purposes of construction of their residential houses. The petitioner is also aggrieved by the order dated 14.5.2010 passed by the respondent District Collector, Khagaria, as contained in Annexure-9 to the writ petition, whereby after grant of approval by the Divisional Commissioner, Munger, Jamabandi has been directed to be created in favour of the aforesaid 27 beneficiaries as also for issuance of rent receipts and for distribution of parwana to them including the private respondents herein.

As per the findings recorded by the authorities in the impugned orders, the land in question has been recorded as *Gairmajarua Aam* land in the revenue records and, therefore, proposal was made for settlement of these two plots of lands in favour of 27 landless families belonging to scheduled castes for construction of their residential houses.

The learned counsel appearing on behalf of the petitioner, while assailing the validity and correctness of the impugned orders, has submitted that it is true that the lands in question were recorded as *Gairmajarua Aam* lands in the revenue records, but subsequently, it was settled by the ex-landlord of Rajbanaili in favour of one Bibhuti Bhushan Pal. It is further submitted that the aforesaid settlee subsequently, executed sale deed in favour of one Shankar Lal Tulsian in the year 1951. The petitioner claims to be the purchaser of



plot no. 219 area 55 decimals only through a sale deed dated 8.4.1987. According to the learned counsel, even if the lands in question was recorded as *Gairmajarua Aam* land in the revenue records, yet it could have been settled by the ex-landlord and could have been transferred in favour of third person. In support of his above contention he has placed reliance on several judgements of this Court including the cases of **Mt. Bibi Misran v. Kishun Pasi** [AIR 1947 Patna 116 (D.B.) (para-2)], **Mst. Husanbano v. State of Bihar** [1959 B.L.J.R. 310 (D.B.) (para-3)], **Laxman Sahai v. State of Bihar** [1990(1) B.L.J. 457 (S.J.) (para-16)] and **Maya Devi & Ors. V. The State of Bihar & Ors.** [2014(3) PLJR 584(para-6)].

Per contra, the learned AC to PAAG-1 appearing on behalf of the respondent nos. 1 to 5 has seriously contested the matter. It is submitted by him that, since the lands in question have been recorded as *Gairmajarua Aam* land in the revenue records, it could not have been settled by the ex-landlord and could not have been transferred to any third person including the petitioner through a sale deed. According to him, admittedly, the lands in question have been recorded as *Gairmajarua Aam* land in the revenue record and it belongs to the State of Bihar; therefore, it has been settled in favour of the 27 landless families belonging to the scheduled castes and some of them have been impleaded as respondent nos. 6 to 17. It is pleaded that if the petitioner is at all aggrieved by the impugned action and claims her right and title over the lands in question, then she must approach the civil court of competent jurisdiction for getting her right and title declared over the lands in question, and only after declaration of her right and title over the lands in question, she can assail the validity and correctness of the impugned orders, as contained in Annexure-8 and 9. In support of his above contentions he has placed



reliance on various judgments of this Court as also the Hon'ble Apex Court including the cases of **Chhattri Mehta v. State of Bihar** [1967 B.L.J.R. 236(D.B.) (para-7)], **Nand Kumar Rai & Ors. V. State of Bihar & Ors.** [1974 P.L.J.R. 27 (Full Bench) (para-14], **Sitaram Choubey v. State of Bihar** [1993(2) PLJR 255 (D.B.) (paragraphs-25, 26 and 27)], **Bishwanath Singh v. State of Bihar** [1999(2) PLJR 130 (D.B.) (Para-2)] and **Gurunath Manohar Pavaskar v. Nagesh Siddappa Navalgund** [AIR 2008 SC 901 (paragraphs 11 and 12)].

After having heard the parties and taking into consideration the materials available on the record, this Court is of the opinion that the claim of right, title and possession of the petitioner over the lands in question is under serious dispute. According to the case of the petitioner also, the lands in question have been recorded as *Gairmajarua Aam* land in the revenue records. It is the specific case of the petitioner that the ex-landlord of Rajbanaili settled the lands in question in favour of one Bibhuti Bhushan Pal. However, the document of alleged settlement by the ex-landlord has not been brought on the record, even though a supplementary affidavit was filed on behalf of the petitioner in compliance of the earlier order passed by this Court. On the other hand, according to the case of the respondents, the lands in question have vested in the State of Bihar, and, therefore, it has been settled in favour of the landless families belonging to the schedule castes. In the opinion of this Court, unless and until the validity of settlement made by the ex-landlord in favour of aforesaid Bibhuti Bhushan Pal is established by cogent materials, the subsequent purchase made by the petitioner by the sale deed dated 08.04.1987 cannot be taken to be a conclusive proof of valid right and title of the petitioner over the lands in question. If the vendor of the petitioner himself was having no legal right over the lands in question,



then he could not have transferred the better right to the petitioner by executing the aforesaid sale deed in the year 1987. It has to be noted that even during the course of hearing of the case the copy of the alleged settlement made by the ex-landlord was not produced by the learned counsel for the petitioner for examination by this Court. The judgments relied upon by the learned counsel for the petitioner, which have been referred to above, will not salvage the case of the petitioner on the simple ground that in all those cases certain orders were passed under the provisions of The Bihar Land Reforms Act or certain suits were decided by the Civil Court. There is absolutely no quarrel with the principles laid down by this Court in the aforesaid judgments, but, in the factual matrices of the case, those principles cannot be straightway applied in the present proceeding filed under Article 226 of the Constitution of India. Similarly, the judgments relied upon by the learned State counsel will also not disentitle the petitioner from laying her claim over the lands in question. In the judgments relied upon by the learned State counsel, certain orders were passed by the revenue authorities under the provisions of The Bihar Tenancy Act, 1885 and other related land-laws, and in that background aforesaid principles have been enunciated. However, no such orders have been passed by the District Collector with respect to the lands in question.

In the present case, the lands in question have been treated to be the lands belonging to the State government, as it has been recorded as *Gairmajarua Aam* land. Therefore, a proposal was made by the respondent District Collector, Khagaria for settlement of the lands in question in favour of 27 landless families at the rate of 3 decimals per family for construction of their residential houses. The proposal made by the respondent District Collector, Khagaria was

approved by the respondent Divisional Commissioner, Munger and thereafter parwana was directed to be issued in favour of the private respondents and other landless families.

It is well settled that the issues of facts raised on behalf of the parties with respect to a particular parcel of land, which requires recording evidence, cannot be appropriately gone into in a proceeding under Article 226 of the Constitution of India.

For the reasons recorded above, this Court does not feel persuaded to interfere with the impugned orders passed by the respondent District Collector, Khagaria, as contained in Annexure-8 and 9. The writ petition is devoid of merit and is, accordingly, dismissed. However, dismissal of the present writ petition shall not come in the way of the petitioner in approaching the Civil Court of competent jurisdiction for getting her right, title and possession declared over the lands in question. If such a civil suit is brought by the petitioner within a period of three months after impleading all the necessary parties including the respondents herein, then the same shall be decided on its own merits strictly in accordance with law on the basis of the evidence/materials produced by the parties, but without being prejudiced by the dismissal of the present writ petition. In the facts of the case, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

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